IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

NOTICE OF MOTION NO.1053 OF 2005
IN
APPEAL (LODGING) NO.169 OF 2005
IN
SUIT NO.3043 OF 1996

Ajwa Fun World & Resort Ltd. & anr... Appellants

v/s.

Oceanic Enviro (India) Pvt.Ltd. .. Respondent

Mr.V.R.Dhond i/by M/s.M.V.Kini & Co. for the appellants.

Ms.Aaradhani Bhansali i/by M/s.Ashwin Ankhad & Associates for the respondent.

CORAM : R.M. LODHA AND
J.P. DEVADHAR, JJ.

DATED : 20th July, 2005

P.C.

Heard.

2. It is appellants' case that they came to know of the decree dated 14.10.2003 on 26.3.2004 when they received the letter dated 18.3.2004 from the respondent's advocate. The appellants took out notice of motion on 23.4.2004 for setting aside the exparte decree. The notice of motion came up for hearing on 27.1.2005. The appellants realised that the motion was not maintainable as decree came to be passed for want of written statement. The appellants withdrew the notice of motion and presented the appeal on 24.2.2005.

3. From the reply affidavit filed by the

respondents, the aforesaid facts do not seem to be disputed.

4. It would be, thus, seen that the appellants acquired the knowledge of the decree dated 14.10.2003 on 26.3.2004. The appellants took out the notice of motion on 23.4.2004 for setting aside the decree. The notice of motion was advisedly not maintainable and, accordingly, the appellant withdrew the notice of motion and preferred the appeal. The aforestated facts would show that there was no want of diligence on the part of the appellants. They were prevented by sufficient cost in filing the appeal in time.

5. Accordingly, we condone the delay in filing the appeal.

6. Office is directed to number the appeal and post it for admission as soon as numbered.

7. Notice of motion stands disposed of.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)